



**Comptroller of the Currency
Administrator of National Banks**

1114 Avenue of the Americas, Suite 3900
New York, NY 10036-7780

September 10, 1999

**Corporate Decision #99-44
January 2000**

Jay W. Waldman, Esq.
Ellsworth, Carlton & Waldman, P.C.
1105 Berkshire Boulevard, Suite 320
Wyomissing, PA 19610

Re: National Penn Bank -- Application to Expand the Activities of Link Financial Services, Inc. To Engage in the Sale of Additional Lines of Insurance as Agent
Control No.: 1999 NE 08 036

Dear Mr. Waldman:

This responds to your application on behalf of National Penn Bank, Boyertown, Pennsylvania ("Bank") on August 20, 1999. The Bank proposes to expand the activities of Link Financial Services, Inc., a wholly-owned operating subsidiary ("Subsidiary"), to engage in the sale of additional lines of insurance, including long-term care, property and casualty insurance. The sale of such insurance, pursuant to 12 U.S.C. § 92, will be as agent to the general public.

Previously, the OCC has approved an expansion of activities of the Subsidiary, through my letter dated May 11, 1998. That expansion of activities involved the sale of life insurance and fixed annuities. The establishment of the Subsidiary was approved by the OCC in a letter dated April 22, 1998 (Conditional Approval # 275).

In the OCC's letter dated November 4, 1996, responding to operating subsidiary notifications filed by First Union Corporation (the "First Union letter"),¹ the OCC thoroughly analyzed Section 92 and concluded that a national bank insurance agency selling insurance pursuant to the authority of Section 92 should be permitted the same marketing range and be able to use the same marketing tools and facilities as generally available for licensed insurance agencies, not affiliated with a bank, in the state(s) in which the bank agency operates. Accordingly, the OCC stated that the following general principles

¹ See OCC Interpretive Letter No. 753, *reprinted in* [1996-97 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-107 (November 4, 1996).

can be distilled to define the scope of solicitation and sales activities permissible for national banks under 12 U.S.C. § 92:²

C The agency located in the "place of 5,000" must, of course, be *bona fide*. . . . Agents will be managed through the agency and the "place of 5,000" will be the agency's business location for licensing purposes. Each agency will be responsible for collecting commissions from insurance carriers and paying commissions to its licensed sales staff. The agency also generally will be responsible for processing insurance applications, delivery of insurance policies, and collection of premiums, where consistent with procedures of the relevant insurance carriers. In addition, business records of the agency, including copies of customer application and policy information, and licensing, customer complaint and other compliance records, will be available at the "place of 5,000."³

The bank agency and its agents may seek the same market range and use the same marketing tools and facilities as generally available for a licensed insurance agency, not affiliated with a bank, that is based in the "place of 5,000."⁴ This will generally allow the following:

- !! Meetings with customers and solicitations and sales of insurance by agents of the bank agency may take place at locations inside the "place of 5,000" as well as at locations outside that "place," provided the agents are managed and paid through the bank agency located in the "place of 5,000" and use that location as their place of business for licensing purposes. If an insurance company has adopted other procedures for its nonbank agents, however, the bank agency may follow the same procedures as other insurance agents selling the company's policies.
- !! Mailings to advertise and sell insurance may originate from inside or outside of the "place of 5,000," and brochures, leaflets, and other literature alerting potential customers to the bank's insurance activities may be distributed from locations both inside and outside of the "place of 5,000," including other branches of the same bank. Personnel of bank branches outside of the "place of 5,000" also may make referrals to the bank's insurance

² The OCC recognized in the *First Union letter* that solicitation and sales techniques can vary with the different marketing strategies employed by different banks and still be consistent with the general principles described in the *First Union letter*.

³ Some of these business records may be maintained and available at the agency in electronic form, with the original hardcopy kept in off-site storage.

⁴ The First Union letter does not address and is not intended to express any opinion on any state law preemption issues. The application of state law would need to comply with recognized preemption standards. See generally *Barnett Bank of Marion County, N.A. v. Nelson*, 134 L. Ed. 2d 237 (1996), and the cases cited therein.

agency. Likewise, telephone and cybermarketing may be used and the calls and messages need not originate within the "place of 5,000."

!! The bank may contract with third parties to assist the agency's sales activities. For example, third parties might provide advertising support, direct mail marketing services, telemarketing services, payments processing, or other types of "back office" support.

The analysis and discussion set forth in the *First Union letter* are equally applicable to the notification submitted by the Bank and are hereby incorporated by reference. By letter dated August 20, 1999, you have provided the requisite notification regarding the operating subsidiary, pursuant to 12 C.F.R. § 5.34. Furthermore, in your letter and in your telephone conversation on September 7, 1999, with OCC Senior Attorney Jason D. Redwood, you have represented that the Bank will conduct the Subsidiary's activities in accordance with the principles set forth in the *First Union Letter* and in *OCC Advisory Letter No. 96-8, Guidance to National Banks on Insurance and Annuity Sales Activities* (October 8, 1996).

Accordingly, the Bank's application is approved, because the insurance sales activities will be conducted in a manner consistent with the interpretation of Section 92 and the principles for applying Section 92 set forth in the *First Union letter*, and the Bank has made the necessary representations.

I have waived the fee ordinarily associated with an expansion of activities, because the fee was paid in connection with the prior application for an expansion of activities of Link Financial Services, Inc.

Sincerely,

/s/

Edward R. Rieder
Acting Licensing Manager
Northeastern District